



Republic of the Philippines  
**SUPREME COURT**  
Manila

THIRD DIVISION

**G.R. No. 79642 July 5, 1993**

**BROADWAY CENTRUM CONDOMINIUM CORPORATION**, petitioner,  
vs.  
**TROPICAL HUT FOOD MARKET, INC. and THE HONORABLE COURT OF APPEALS**, respondents.

*Gozon, Berenguer, Fernandez & Defensor Law Offices for petitioner.*

*Romulo, Mabanta, Buenaventura, Sayoc & Delos Angeles Law Office for respondent.*

**FELICIANO, J.:**

Petitioner Broadway Centrum Condominium Corporation ("Broadway") and private respondent Tropical Hut Food Market, Inc. ("Tropical") executed an 28 November 1980 a contract of lease. Broadway, as lessor, agreed to lease a 3,042.19 square meter portion of the Broadway Centrum Commercial Complex for a period of ten (10) years, commencing from 1 February 1981 and expiring on 1 February 1991, "renewable for a like period upon the mutual agreement of both parties." The rental provision of this contract reads as follows:

3. **BASIC RENTAL ON LEASED PREMISES** — LESSEE agrees to pay LESSOR a basic monthly rental on the leased promises in the amount of ONE HUNDRED TWENTY THOUSAND PESOS (P120,000.00) Philippine Currency, during the first three (3) years of this lease contract from February 1, 1981 to February 1, 1984, allowing two (2) months grace period on rental for renovation/improvements on the leased promises from December 1, 1980 to January 31, 1981. The basic rental shall be increased to ONE HUNDRED FORTY THOUSAND PESOS (P140,000.00) per month during the next three (3) years from February 1, 1984 to February 1, 1987, and ONE HUNDRED SIXTY FIVE THOUSAND PESOS (P165,000.00) per month during the last four (4) years from February 1, 1987 to February 1, 1991.

The first basic monthly rental shall be paid in advance to the LESSOR on or before December 1, 1980. Succeeding basic monthly rentals starting March, 1981 be paid by LESSEE to LESSOR, without the necessity of a previous demand or the services of a collector, within the first five (5) days of the month to which said rental shall correspond, at the Office of the LESSOR at Broadway Centrum.

During the first year of the lessor-lessee relationship between Broadway and Tropical, no problems were apparently experienced by either of them. On 5 February 1982, however, Tropical wrote to Broadway stating that Tropical's rental payments to Broadway were equivalent to 7.31% of Tropical's actual sales of P17,246,103.00 in 1981, while "[Tropical's] gross profit, rate [was] only 10%." Tropical went on to say that the rental specified in that contract had been "based merely on [Tropical's] projections that [Tropical] could reach an average sale of P120,000.00 a day;" however, Tropical's total sales projection for 1982 was only P23,000,000.00. This would mean again a rental rate of 6.08% of sales "which is too high for Tropical Hut-Broadway considering that the present rental rates of other Tropical branches are even below the normal rate of 1.5% on sales." Accordingly, Tropical made the following proposal to Broadway:

[Tropical] would therefore propose to reduce the present monthly rental to P50,000.00 or 2.0% of their monthly sales whichever is higher, *up to the end of the third year* after which it shall again be subject to renegotiations. (Emphasis supplied)

On 4 March 1982, Broadway responded to Tropical's latter by stating that it (Broadway) believed that the problems of Tropical's supermarket in the Broadway Centrum were within the control of Tropical's management. Broadway offered six (6) suggestions which, if implemented, should result in increased sales for Tropical of at least 15% in the succeeding months. In the meantime, Broadway made the following counter-proposal consisting of conditional reduction of the stipulated rental by P20,000.00 for a limited period of four (4) months:

. . . Meantime, we are agreeable to a conditional reduction of your rental by P20,000.00 per month *for four months starting this month* on a trial basis; that is, the P20,000.00 per month reduction in rental will be paid back to us and spread over the last six months of the years should the target of 15% increase in sales be achieved by the fourth month. However, should your sales not increased by 5% in spite of the improvements you have introduced, the reduction in rental of P20,000.00 per month of P80,000.00 for four months will not have to be paid anymore. In other words, the monthly reduction in rental is conditioned upon your not achieving the desired 15% increased in sales volume by the fourth month assuming you implement all of the above changes.

It is understood, however, that *any reduction in rental* extended is *merely a temporary suspension of the original rate of rental* stipulated in our contract of lease and *not an amendment thereto*. <sup>2</sup>  
(Emphases supplied)

Officers of Tropical met with the President of Broadway and during this conference, Tropical's officers recounted the "low sales volume" that the Tropical Supermarket in the Broadway Centrum was experiencing, apparently as a result of the temporary closure of Doña Juana Rodriguez Avenue. <sup>3</sup> This Avenue is a major thoroughfare adjacent to the Broadway Centrum and was then closed to vehicular traffic because of the road expansion project of the Government. Broadway's President, Mrs. Cita Fernandez Orosa, was aware that the temporary closure of the Doña Juana Rodriguez Avenue had affected the business of all the Broadway's tenants, including Tropical. She, therefore, agreed on 20 April 1982 to a "provisional and temporary agreement" which agreement needs to be quoted in full:

Further to our letter dated April 6, 1982, we hereby make formal *our provisional and temporary agreement to a reduction of your monthly rental* on the basis of 2% of gross receipts or P60,000.00 whichever is higher. Gross receipts should be construed as the total sales and receipts from sublessees of your area and from whatever source arising from the area leased by you. *This Provisional arrangement should not be interpreted as amendment to the lease contract entered into between us.*

We invite your attention to the fact that, as agreed upon, you have committed to return by the end of April a certain portion of your leased premises totalling 466.56 square meters and presently occupied by your drug store and coffee shop outlets and half of the hallway.

Finally we wish to remind you that the *temporary alteration in rental* is conditioned on your good faith implementation an the suggestions we conveyed to you in our letter of March 4, 1982 regarding the operations of the supermarket and shall not commence until the area mentioned above to be surrendered is actually surrendered.

Should you find the foregoing in accordance with our previous verbal agreement, please signify your acceptance by signing above the word "conforme."

Thank you for your, continued patronage.

C o n f o r m e: Very, truly yours,

Tropical Hut Food Broadway Centrum  
Market, Inc. Condominium Corp.

By: (Signed) By: (Signed) <sup>4</sup>

(Emphasis supplied).

Months later, the road expansion project at the Doña Juana Rodriguez Avenue was completed. By a letter dated 15 December 1982, addressed to Tropical, Broadway referred to the rental which "as of last, April 20, 1982, was *provisionally reduced*" to P60,000.00 a month or 2% of gross receipts whichever is higher "*without waving any of [Broadway's] rights under our rental agreement.*" Broadway then went on to say that:

After careful deliberation, we regret that *this concession can no longer be extended in its present form*. We, therefore, advising that we shall increase the monthly rental to P100,000.00.

This increase, however, shall be implemented *gradually* as follows: *P80,000.00 effective January, 1983 and P100,000.00 effective April, 1993 until further notice.*

Considering the fact that you collect a monthly gross rental of P24,600.00 from your concessionaires (other forms of income not considered), the *previous temporary arrangement* afforded you more than sufficient respite from whatever business constraints you may have had then. The consequent effect of *said temporary arrangement* is your payment of a monthly rental of P35,400.00 or an effective rate of P14.32 only per square meter. We are sure that you will agree with us that this rate is very low and cannot therefore be sustained indefinitely. <sup>5</sup> (Emphases supplied).

While the rental rate above fixed by Broadway was higher than that set out in the provisional and temporary agreement of the parties of 20 April 1982, the rates so fixed were nonetheless lower than that stipulated in their contract of 28 November 1980. Tropical, however, was not satisfied with the adjusted rates fixed by Broadway. In a letter dated 4 January 1983, Mr. Luis Que of Tropical wrote to Broadway's President appealing to Broadway "to fix our monthly rental at P60,000.00 or 2% of our gross receipts whichever is higher." In this letter, Mr. Que expressly hoped that

[Broadway would] understand our position, and may we reiterate *our appeal to maintain* our present *provisional* rates until such time that more sales are achieved. (Emphasis supplied)

Mr. Luis Que's appeal was, however, found unsatisfactory by Broadway. In a letter dated 13 January 1983, Broadway said:

We are replying to your letter of January 4, 1983. While it may be admitted that you are incurring losses in your operations, the same is not a monopoly experienced solely by your corporation. *Broadway Centrum itself has had its share of business setbacks* but we have *nevertheless* decided to *absorb part of your losses last year* by agreeing to a *temporary reduction* of your monthly rental. However, as we have stated in our December 15, 1982 letter, *this concession can no longer be extended* in its present form which continues to be a considerable reduction on the provisions of *our existing long term contract*. Consequently, we have to reiterate our advise on you regarding your rental increased. <sup>6</sup> (Emphasis supplied).

Tropical continued its renegotiation efforts. In another letter dated 29 March 1983, Broadway's President wrote to Mr. Luis Que turning down his request for reconsideration. Broadway, however, was evidently desirous of keeping Tropical as a tenant if possible and so stated that the P100,000.00 monthly rental would begin, not on April 1983 as stated in its letter of 15 December 1982 but rather on July 1983. By a letter, dated 9 April 1983, the Credit and Collection Officer of Broadway sent Mr. Luis Que a bill for P81,320.00 representing the accrued differential of P20,000.00 per month between the rental which Broadway was willing to grant to Tropical (P80,000.00 per month starting 1 January, 1983) and up to 30 June 1983) and the P60,000.00 per month or 2% of gross receipts whichever is higher, under the temporary and provisional letter-agreement of 20 April 1982.

Tropical responded to the statement of account sent by Broadway by pleading, once more, in a letter dated 15 April 1983, that Tropical's present rentals of P60,000.00 monthly or 2% of gross receipts, whichever is higher, "*would at least stay until we have somehow recovered,*" to which Tropical proposed, however, to add 20% of its income from concessionaires (i.e., concessionaires at Tropical-Broadway Supermarket). <sup>7</sup>

Tropical's last counter-offer was not acceptable to Broadway. In a letter dated 22 April 1983, Broadway's President wrote to Mr. Luis Que stating that "the matter was no longer negotiable":

We are responding to your letter of April 15, 1983 proposing a counter offer to the payment of your rentals. You will remember that in our last meeting our position on the matter has been unequivocally stated. *The temporary arrangement of reducing your monthly rentals was extended as an assistance.* This had caused us to lose P620,000.00 on rental income.

You will agree that this is a sizeable amount which had tremendous adverse effects on our financial position. *This can no longer be sustained.*

We reiterate, therefore, that the matter is no longer negotiable and we strongly urge you to settle your obligation to minimize the *2% penalty on delayed payments provided for in our contract.*

We trust that you will see the merits of the foregoing. <sup>8</sup> (Emphasis supplied).

On 5 May 1983, Mr. Mariano Gue, adopting a new and much harder posture than Mr. Luis Que had, wrote to Broadway as follows:

. . . I could only confirm what I told you in our conference that we cannot afford any increase in rentals in the space occupied by us at Broadway Centrum. And I could only repeat what is contained in the letter sent you by our Mr. Luis Que dated April 15, 1983. *We cannot agree to an increase in rentals at this time.* To do so would put us in a financial situation worse than we were in before we agreed to reduce the leased premises and adjust the rentals. *Our position is that you cannot*

*arbitrarily and unilaterally increase the rentals. This is a matter which should be mutually agreed upon by us and as stated, we are not in a financial position to agree to such an increase.*<sup>9</sup> (Emphasis supplied).

On the same day, 5 May 1983, Mrs. Orosa wrote to Mr. Mariano Que expressing shock and dismay at the posture suddenly adopted by the latter. Mrs. Orosa wrote:

We are replying to your letter of May 5, 1983 categorically stating that your position is that we cannot arbitrarily and unilaterally increase the rentals. *We are appealed by the apparent attempt to distort the very crystal clear arrangement we reached last April 20, 1982 anent the temporary alteration of your rentals.* We hereby attached a xerox copy of said agreement with our underscores to refresh your memory.

We have exhaustively, repeatedly but patiently labored to explain to you *the temporary and provisional arrangement to reduce your monthly rentals is not amendment to the lease contract and this was done merely as an assistance.* There is, therefore, absolutely no basis to your claim that we cannot arbitrarily and unilaterally increase the rentals. We strongly feel that *we should have instead been the recipient an act of gratitude from you.*

In view therefore of your obstinate decision to blur your view and continue refusing to heed our demands, we are hereby formally serving you notice that if you still fail to pay your back accounts amounting to P100,000.00 exclusive of penalty charges by Monday, May 9, 1983, paragraph five (5) of our lease contract will be implemented.<sup>10</sup> (Emphasis supplied).

A week later, on 12 May 1983, Tropical filed a Complaint before the Regional Trial Court, Quezon City, seeking a restraining order or preliminary injunction to prevent Broadway from invoking and implementing Section 5 of their Lease Contract and asking the court to decree that the, rental provided for in the letter-agreement of 20 April 1982 "should subsist while the low volume of sales [of Tropical] still continues." A restraining order was issued by the trial court *ex parte* the next day and a preliminary injunction was granted on 2 June 1983, upon Tropical's filing of a bond in the amount of P100,000.00.

On 6 January 1984, while trial before the Regional Trial Court was pending, Broadway informed Tropical that the basic rental would be increased to P140,000.00 per month during the next three (3) years from 1 February 1984 to 1 February 1987 in accordance with paragraph (3) of the Lease Contract dated 28 November 1980.

Tropical reacted by filing a supplemental complaint with the trial court raising for the first time the issue of whether or not the letter-agreement dated 20 April 1982 had novated the Lease Contract of 28 November 1980. Tropical alleged that the original Contract. of Lease had been novated in its principal conditions — i.e., the area subject to the lease and the lease rentals — by the letter-agreement dated 20 April 1982 and that the reduced lease rates set out in the letter-agreement are to subsist while Tropical's sales volume "remains low."

Petitioner, upon the other hand, vehemently denied that the original Lease Contract had been novated by the letter-agreement of 20 April 1982.

In time, the trial court rendered its decision dated 14 March 1985, the dispositive portion of which reads as follows:

WHEREFORE, judgment, is hereby rendered in favor of the plaintiff and against the defendant as follows:

1. The writ of preliminary injunction previously issued is made permanent;
2. The reduced rental provided for in the letter-agreement of April 20, 1982 (Exh. "G" or "5") shall subsist or be *effective during the period that a plaintiff cannot achieve its Projected daily sales average as envisioned in its feasibility study;*
3. The contract of leased dated November 28, 1980 (Exh. "A" or "1") is declared as partially novated or modified by the letter-agreement;
4. The amount of monthly rentals payable by plaintiff for the reduced area of the leased promises *after* plaintiff has achieved its projected daily sales average is fixed as follows:

February 1, 1981 to February 1, 1984 —  
P39.45 per square meter or P101,609.00;

February 1, 1984 to February 1, 1987 —  
P46.02 per square meter or P118,530.00;



February 1, 1987 to February 1, 1991 —  
P54.24 per square meter or P139,702.00.

Correspondingly, defendant's counterclaim is dismissed.

Costs against the defendant.

So Ordered. <sup>11</sup> (Emphasis supplied).

On appeal, the Court of Appeals affirmed the decision of the trial court. The Court of Appeals held that the letter-agreement dated 20 April 1982 had novated the principal conditions of the Lease Contract. The Court of Appeals also held that the reduction in the rentals was not entirely a gratuitous accommodation on the part of Broadway since the reduction of the leased space by 466.56 square meters, possession of which was returned by Tropical to Broadway, constituted valuable consideration for the reduction of rentals while the "low sales volume" of Tropical continued. The Court of Appeals corrected a microscopic arithmetical error committed by the trial court and in effect directed Tropical to pay, when its "low sales volume" shall have been overcome, the following rental rates:

From 1 February 1984 up to 1 February 1987 — P118,529.15 per month;

From 1 February 1987 up to 1 February 1991 — P139,695.07 per month.

Petitioner Broadway now asks us to review and set aside the Decision of the Court of Appeals.

The sole issue confronting us here is Whether or not the latter-agreement dated 20 April 1982 had novated the Contract of Lease of 28 November 1980.

We start with the basic conception that novation is the extinguishment of an obligation by the substitution of that obligation with a subsequent one, which terminates it, either by changing its object or principal conditions or by substituting a new debtor in place of the old one, or by subrogating a third person to the rights of the creditor. <sup>12</sup> Novation through a change of the object or principal conditions of an existing obligation is referred to as objective (or real) novation. Novation by the change of either the person of the debtor or of the creditor is described as subjective (or personal) novation. Novation may also be objective and subjective (mixed) at the same time. In both objective and subjective novation, a dual purpose is achieved — an obligation is extinguished and a new one is created in lieu thereof. <sup>13</sup>

If objective novation is to take place, it is essential that the new obligation expressly declare that the old obligation is to be extinguished, or that the new obligation be on every point incompatible with the old one. <sup>14</sup> Novation is never presumed; it must be established either by the discharge of the old debt by the express terms of the new agreement, or by the acts of the parties whose intention to dissolve the old obligation as a consideration of the emergence of the new one must be clearly manifested. <sup>15</sup> It is hardly necessary to add that the rule that novation is never presumed, is not avoided by merely referring to partial novation. The will to novate, whether totally or partially, must appear by express agreement of the parties, by their acts which are too clear and unequivocal to be mistaken.

Applying the above principles to the case at bar, it is entirely clear to the court that the letter-agreement of 20 April 1992 did *not* extinguish or alter the obligations of respondent Tropical and the rights of petitioner Broadway under their lease contract dated 28 November 1980.

In the first place, the letter-agreement of 20 April 1982 was, by its own terms, a " *provisional and temporary* agreement to a reduction of [Tropical's] monthly rental —." The letter-agreement, as noted earlier, also contained the following sentence:

*This provisional agreement should not be interpreted as amendment to the contract entered into by us.*

The same letter also referred to the reduction of rental as a "temporary alteration in rental" which was "conditioned" upon good faith implementation by Tropical of the six (6) principal suggestions Broadway had conveyed to Tropical concerning improvement of the operations of Tropical's supermarket at the Broadway Centrum. The non-specification by Broadway (who had prepared the letter-agreement in which Tropical placed its *conforme*) of the period of time during which the reduced rentals would remain in effect, only meant that Broadway retained for itself the discretionary right to return to the original contractual rates of rental whenever Broadway felt it appropriate to do so. There is nothing in the text of the 20 April 1982 letter-agreement to suggest that the reduced concessional rental rates could not be terminated by Broadway without the consent of Tropical.

In the second place, the formal notarized Lease Contract of 28 November 1980 made it clear that a temporary and provisional concessional reduction of rentals which Broadway might grant to Tropical was not to be construed as alteration or waiver of any; of the terms of the Lease Contract itself. That Lease Contract provided, among other things, as follows:

32. *NON-WAIVER OF CONDITIONS & COVENANTS* — The failure of the LESSOR to insist upon strict performance of any of the terms, conditions and stipulation hereof shall not be deemed a relinquishment or waiver of any right or remedy that said LESSOR may have, nor shall it be construed as a waiver of any subsequent breach of, or default in the terms, conditions and covenants hereof, *which terms, conditions and covenants shall continue under this Contract* and shall be deemed to have been made unless express in writing and signed by the LESSOR. <sup>16</sup> (Emphasis supplied).

In the third place, the course of negotiations between Broadway and Tropical *before* the execution of their letter-agreement of 20 April 1982, quite clearly indicated that *what they were negotiating was a temporary and provisional reduction of rentals*. Thus, Tropical itself, in its letter to Broadway dated 5 February 1982, quoted earlier, had proposed reduction of rentals from the stipulated contractual rates to P50,000.00 per month or 2% of monthly sales, whichever is higher, "*up to the end of the third year after which it shall again subject, to renegotiation.*"

*Any reduction in rental extended is merely a temporary suspension of the original rate of rental stipulated in our contract of lease and not an amendment thereto.*

In the fourth place, the course of discussions between Broadway and Tropical, as disclosed in their correspondence, *after* execution of the 20 April 1982 letter-agreement, shows that the reduction of rentals agreed upon in the letter-agreement was *not* to persist, for the rest of the life of the ten (10)-year Contract of Lease. That correspondence is bereft of any, sign of mutual agreement or recognition that the reduced rentals had so permanently replaced the contract stipulations on rentals as to have become immune to change save by common consent of Tropical and Broadway. Quite the contrary. In Broadway's letter to Tropical dated 15 December 1982, Mrs. Orosa referred to the letter-agreement of 20 April 1982 which "*provisionally* reduced to P60,000.00 a month or 2% of [Tropical's] gross receipts, whiche